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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN -2 AM 10:41

No. 62824-1-I

COURT OF APPEALS
DIVISION ONE
OF THE STATE OF WASHINGTON

D. EDSON CLARK,

Appellant/Intervenor

v.

SMITH BUNDAY BERMAN BRITTON, P.S., *et al*

Respondent

NONPARTY TODD BENNETT'S JOINDER IN
RESPONSE BY RESPONDENTS SMITH BUNDAY
BERMAN BRITTON, P.S., AND SHARON
ROBERTSON TO BRIEF OF APPELLANT

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I. INTRODUCTION

D. Edson Clark (plaintiffs' expert witness and intervenor in the trial court action) appealed the Order Granting on Motion to Intervene and Denying on Motion to Unseal, filed December 5, 2008 ("the appealed order"). (CP 231-33)

That order deals with the sealing of two documents (and exhibits to one of them) that were not considered by the trial court at any time during the proceedings: plaintiff Horrobin's brief filed in opposition to defendants' summary judgment motion (Docket #153) and Clark's declaration (as plaintiffs' expert witness) filed in support of that brief (filed twice as Docket #154 & #159). (CP 295-315, 204-26 & 316-22) These documents reflect personal financial information, including primarily information provided for preparation of federal income tax returns by respondents for nonparty Todd Bennett and entities related to Mr. Bennett's businesses ("Bennett entities"). Such business records and information not only involve Mr. Bennett personally, but other nonparty investors with financial interests in the Bennett entities.

Because the discovery being conducted in this case involved the confidential personal financial (including tax-related) records of Mr. Bennett and other third parties who were not parties but who

could be seriously harmed by the disclosure of such confidential documents, Mr. Bennett was granted leave by the court to participate in oral argument and discovery proceedings in the underlying action pursuant to the Order entered on March 17, 2008. (Docket #48; Supp. CP ____)

As such, Mr. Bennett on behalf of himself and the Bennett entities join respondents Smith Bunday Berman Britton, P.S., and Sharon Robertson (defendants in the trial court action and collectively "Smith Bunday" herein) in its request that this Court affirm the trial court's ruling in the appealed order.

II. JOINDER IN RESPONSE BRIEF OF RESPONDENTS SMITH BUNDAY

The facts material to this appeal are set forth and incorporated in the Response by Respondents Smith Bunday Berman Britton, P.S. and Sharon Robertson to Brief of Appellant. Nonparty Todd Bennett incorporates the facts and arguments as set forth in that Response as if fully set forth herein and joins in such Response.

The documents that were sealed in this case and were subject to the trial court's protective order involve sensitive income tax information of persons and entities that were not parties to the


underlying action. Mr. Bennett provided these records, which include his own personal financial information as well as financial information of investors in his companies, to his accountants, Smith Bunday, for their use in preparing income tax returns, with the expectation that Smith Bunday would maintain their confidentiality. Investors in Mr. Bennett's companies likewise provided such information to Mr. Bennett with the reasonable expectation that Mr. Bennett and any professionals he retained to provide services to the businesses would keep them confidential. Mr. Bennett did not authorize Smith Bunday to disclose his confidential information or that of his investors, particularly in a matter in which Mr. Bennett was not even a party to the litigation. Mr. Bennett has a strong interest in protecting his own private financial information and, because of the duties Mr. Bennett owes to his investors, he has a substantial interest in protecting the financial information of other third parties that was provided to him. The disclosure of these personal financial records and the confidential tax-related information in them would serve no purpose other than the apparent personal interests of intervenor Ed Clark, who as plaintiffs' expert was bound by the terms of the protective order in this case.

For these reasons, nonparty Todd Bennett joins in the

Response of Smith Bunday and respectfully requests that the court affirm the appealed order and dismiss intervenor Ed Clark's appeal.

DATED this 1st day of June, 2009.

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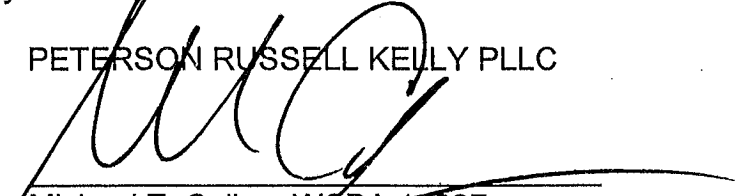
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CERTIFICATE OF SERVICE

I certify that service of a true and complete copy of the foregoing document was made on June 1, 2009, by mailing the same (first class, postage prepaid) to the mailing addresses of the attorneys for appellant/intervenor Ed Clark (Michele L. Earl-Hubbard, David Norman & Chris Roslaniec of Allied Law Group, LLC), respondents/plaintiffs *pro se* Rondi Bennett and Gerald Horrobin and attorneys for respondent Smith Bunday Berman Britton P.S. Mary C. Eklund, and Barbara L. Schmidt,.

DATED this 1st day of June, 2009.

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